ATTORNEY GENERAL
STATE OF MONTANA

Joseph P. Mazurek
Attorney General

Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

February 14, 1995

Mr. Donald G. Kittson
Blackfeet Legal Department
P.O. Box 849
Browning, MT 59417

Dear Don:

Thank you for hosting our meeting of last week. We appreciated the warm welcome and open discussion with the Council about updating our 1959 agreement respecting State Highway Patrol issuance of traffic citations to the tribal members on the Reservation. As the Attorney General noted at that meeting, the current negotiations toward redrafting that agreement are to bring it into compliance with the 1981 State-Tribal Cooperative Agreements Act, Mont. Code Ann. § § 18-11-101 to -112 (1993). The Cooperative Agreements Act requires state-tribal agreements to address specific issues, e.g., training standards, liability and minimum insurance requirements, Mont. Code Ann. § 18-11-104 (a), (b) and (c) (1993), which were not addressed in the prior agreement.

The question whether the 1959 agreement is still "valid" is unclear. In my experience in public contracting, I have found that the questions of an agreement's validity and any proposed remedies for a supposedly invalid agreement with the state are intertwined, so that the answer to the question of validity may well depend on who is raising the issue, (a party or nonparty?) who relied on the agreement, how a dispute arose and what remedy,

if any, is requested. See e.g., Taurman, v. Town of Cascade, 192 Mont. 529, 629 P.2d 226 (1981); Montana Ass'n of Underwriters v. Department of Administration, 172 Mont. 211, 563 P.2d 577 (1977).

You indicated a recipient of a state-issued traffic citation is challenging the prosecution on the claim that the ticket was invalid because the 1959 agreement is "invalid." The Tribe has chosen to prosecute, however, and whether it has sufficient evidence to convict, I can't say. Further, whether the Tribe chooses to recognize this challenge is a matter of tribal law on which we would not opine.

You inquired about an Attorney General's Opinion. The Attorney General's authority to issue opinions is subject to statute and policy. Enclosed for your information are the current guidelines and citations to relevant statutes.

I hope we can keep the momentum going and execute the new agreement soon. Due to our liability concerns about potential actions against state law enforcement officers, and the nonconforming nature of the 1959 agreement, the Highway Patrol will continue to refrain from issuing tickets to tribal members on the Reservation until the new agreement can be executed.

I look forward to meeting with you the afternoon of February 27, 1995. I am hopeful we can get the highway patrol agreement ready for presentation on March 2, 1995.

Thank you for all your cooperation.

Very truly yours,

/s/ Sarah A. Bond
SARAH A. BOND
Assistant Attorney General

sab/brf
Enc.

cc: Col. Craig Reap
Sgt. Alan Michaels